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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

MEDFORD DIVISION

PAMELA GALE SHELDON, Individually and
as Personal Representative of the Estate of
BILL JACK SHELDON,

Plaintiff,

v.

CLEAVER-BROOKS, INC., et al.,

Defendants.

Case No 1:19-CV-01443-MC

**DEFENDANT CLEAVER BROOKS,
INC.'S FIRST AMENDED ANSWER
AND AFFIRMATIVE DEFENSES TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT**

1.

Answering Paragraph 1, including all subparts, Cleaver-Brooks admits it is a Delaware corporation, not registered to do business in the State of Oregon, with its principal place of business in Georgia. Cleaver-Brooks denies the remaining allegations contained in Paragraph 1 to the extent they are directed against it. Cleaver-Brooks is without knowledge or information sufficient to form

a belief as to the truth of the remaining allegations in Paragraph 1, and therefore denies them.

2.

Cleaver-Brooks is without knowledge or information sufficient to form a belief as to the truth of the allegations in contained in Paragraph 2, and therefore denies them.

3.

Cleaver-Brooks denies the allegations contained in Paragraph 3 to the extent they are directed against it. Cleaver-Brooks is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 3, and therefore denies them.

4.

Cleaver-Brooks denies the allegations contained in Paragraph 4 to the extent they are directed against it. Cleaver-Brooks is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 4, and therefore denies them.

5.

Cleaver-Brooks denies the allegations contained in Paragraphs 5 through 6 to the extent they are directed against it. Cleaver-Brooks is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraphs 5 through 6, and therefore denies them.

6.

Answering Paragraph 7, Cleaver-Brooks realleges and incorporates its responses to Paragraphs 1 through 6 as though fully set forth herein.

7.

Cleaver-Brooks denies the allegations contained in Paragraphs 8 through 12, including all sub-parts, to the extent they are directed against it. Cleaver-Brooks is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraphs 8 through 12, and therefore denies them.

8.

Answering Paragraph 13, Cleaver-Brooks realleges and incorporates its responses to Paragraphs 1 through 12 as though fully set forth herein.

9.

Cleaver-Brooks denies the allegations contained in Paragraphs 14 through 16, including all sub-parts, to the extent they are directed against it. Cleaver-Brooks is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraphs 14 through 16, and therefore denies them.

10.

Answering Paragraph 17, including Plaintiff's prayer for judgment, Cleaver-Brooks denies the allegations to the extent they are directed against it, and denies that Plaintiffs are entitled to the relief requested, or to any relief, from Cleaver-Brooks. Cleaver-Brooks is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations pertaining to other parties, and therefore denies them.

11.

Any allegations in the Complaint not specifically admitted herein are denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense

(Comparative Fault)

13.

The damage, injury or condition, if any, as alleged in Plaintiff's Complaint may have been caused or substantially contributed to by the comparative fault of Decedent Bill Jack Sheldon, by conduct including, but not limited to:

- a) Failure to properly use respirators or other protective measures;
- b) Improper use of asbestos-containing products;

- c) Failure to heed warnings;
- d) Use of tobacco products;
- e) An assumption of known and appreciated risks; and
- f) Any other factors that discovery may disclose regarding the degree of his fault.

Second Affirmative Defense

(Conduct of Others)

14.

Any damages Plaintiff may have suffered, which damages are expressly denied, were caused by the negligence or other conduct of one or more of the other defendants to this lawsuit or, in the alternative, by the negligence or other conduct of some person, corporation, association or other entity not presently a party to this lawsuit.

Third Affirmative Defense

(Assumption of Risk)

15.

Decedent Bill Jack Sheldon voluntarily and expressly assumed the risk that caused the alleged damages, if any, thereby barring these claims or reducing Plaintiff's recovery.

Fourth Affirmative Defense

(Limitation of Non-Economic Damages)

16.

Pursuant to ORS § 31.710, the amount of any non-economic damages recoverable in this action may not exceed \$500,000.

Fifth Affirmative Defense

(Employers' Negligence)

17.

Any injury, condition or loss suffered was caused or permitted by the negligent failure of Decedent's employers to provide adequate instructions to Decedent concerning the safe use of asbestos products and by said employers' failure to provide Decedent with a safe place of work, and/or adequate equipment to protect Decedent from harmful exposure.

Sixth Affirmative Defense

(Sophisticated User)

18.

Decedent was employed by knowledgeable and sophisticated employers, and/or was a knowledgeable and sophisticated user himself. Consequently, any duty to warn Cleaver-Brooks may have had was not the proximate cause of any alleged injury.

Seventh Affirmative Defense

(Apportionment of Damages)

19.

If it is proven at trial that defendant Cleaver-Brooks is liable for damages to Plaintiff, which liability is expressly denied, said liability is not sole but rather proportionate and, consequently, Cleaver-Brooks is entitled to have its liability limited to its proportionate share or, alternatively, is or may be entitled to contribution from such other defendants, persons or entities.

Eighth Affirmative Defense

(Statute of Limitations or Repose)

20.

Plaintiff's claims against Cleaver-Brooks are barred, in whole or in part, by the applicable statutes of limitations or repose.

Ninth Affirmative Defense

(Offset)

21.

Pursuant to ORS § 31.580, to the extent that any injury or damage which Plaintiff may have sustained has been subject to compensation by collateral sources or otherwise, any recovery to which Plaintiff might otherwise be entitled is barred or reduced thereby.

Tenth Affirmative Defense

(Mitigation of Damages)

22.

Plaintiff or Decedent failed to mitigate their damages.

Eleventh Affirmative Defense

(Intervening/Superseding Cause)

23.

Plaintiff's alleged damages were caused by an intervening or superseding cause for which Cleaver-Brooks is not responsible.

Twelfth Affirmative Defense

(Set-Offs)

24.

To the extent that Plaintiff has released, settled, or otherwise compromised her claims in whole or in part, those claims are barred by operation of law or, alternatively, are reduced by way of set-off.

RESERVATION OF RIGHTS

25.

Cleaver-Brooks hereby specifically reserves the right to amend its Answer by way of adding additional affirmative defenses, counterclaims, cross-claims, or by instituting Third Party Actions, and/or reserves the right to maintain a separate action against each and every Defendant named or to be named herein for indemnification and/or contribution, including costs and reasonable attorney fees.

PRAYER FOR RELIEF

WHEREFORE, having fully answered Plaintiff's First Amended Complaint, Cleaver-Brooks requests the following relief:

- (a) That Plaintiff's First Amended Complaint against Cleaver-Brooks be dismissed with prejudice;
- (b) That Plaintiff recovers nothing from Cleaver-Brooks on Plaintiff's claims herein;
- (c) That Cleaver-Brooks be awarded its costs and disbursements herein, including reasonable attorneys' fees;
- (d) That Cleaver-Brooks be granted such other and further relief as the Court may deem just and proper; and
- (e) That in the event Cleaver-Brooks is found liable to Plaintiff herein, which liability is expressly denied, Cleaver-Brooks be awarded judgment, either herein or later in a

separate trial or action against one or more of the other Defendants presently named, or that are subsequently named, for contribution and/or indemnification, including costs and attorney fees.

Dated this 7th day of January, 2020

RIZZO MATTINGLY BOSWORTH PC

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**CERTIFICATE OF SERVICE OF
DELIVERY AND/OR MAILING**

I am employed by the law firm of Rizzo Mattingly Bosworth PC in Portland, Oregon. I am over the age of eighteen years and not a party to the subject cause. My business address is 1300 SW Sixth Avenue, Ste. 330, Portland, Oregon 97201.

On the date below, I caused to be served on all parties in this action by transmitting a true copy thereof **DEFENDANT CLEAVER BROOKS, INC.'S AMENDED ANSWER** in the following manner unless otherwise indicated.

<u>VIA E-MAIL & ECF</u>	
Jeffrey Mutnick LAW OFFICE OF JEFFREY S. MUTNICK 737 SW Vista Ave Portland, OR 97205 jmutnick@mutnicklaw.com <i>Attorneys for Plaintiffs</i>	Jessica Dean Benjamin Adams DEAN OMAR BRANHAM SHIRLEY, LLP 302 N. Market St. Suite 300 Dallas, TX 75202 jdean@dobslegal.com badams@dobslegal.com <i>Attorneys for Plaintiffs</i>

I declare under penalty of perjury and under the laws of the State of Oregon that the foregoing is true and correct.

Executed at Portland, Oregon, this 7th day of January, 2020.

/s/Shannon Boyd

Shannon Boyd
Paralegal